

ATTORNEY DOCKET NO.
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PATENT
Customer ID No. 33649

REMARKS/ARGUMENTS

Claims 1 through 21 are pending. In an office action mailed June 17, 2004 (Paper No. 12), Claims 1, 7, 11, 15 through 17 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Terry et al. (U.S. patent 6,587,473) in view of Lauffenburger et al. (U.S. Patent 6,590,897). Claims 2, 3, 5, 9, 13 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Terry in view of Lauffenburger and further in view of Schuster (U.S. Patent 6,483,600). Claims 4, 6, 8, 10, 12, 14, 19 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Terry in view of Lauffenburger and further in view of Yoshida et al. (U.S. Patent 6,437,870). These rejections are respectfully traversed.

Rejections under 35 U.S.C. 103(a)

Terry in view of Lauffenburger fails to provide a prima facie basis for the rejection of claims 1, 7, 11, 15-17 and 20 under 35 U.S.C. 103(a), as they fail to disclose each element of the claimed invention. In particular, it is asserted that Terry discloses a "calling modem being operable to compare the network latency to a network latency threshold (please note Terry et al, column 16 lines 20-33)." However, the cited section of Terry fails to disclose comparing the network latency to a network latency threshold. In fact, it discloses determining the whether an upper threshold of frames have been received correctly. The number of frames that have been received correctly is not network latency. As described in the specification at page 5, line 21 to page 6, line 10:

In addition to the standard T.38 signals, the signaling between the calling or emitting side and the answering or receiving side includes signals to accomplish network latency recovery. The standard T.38 signals shown between the gateways G1 and G2 are t30-data(JM, info), t30-data(CM, info), and t30-indicator(CNG). The T.38 signals added for network latency recovery are a t30-indicator(CNG sent) signal and a t30-indicator(DoV.8/Dolowspeed) signal. Certain signals are designated "t30" to reflect that the terminals F1 and F2 communicate during a T.30 session. The nature of a T.30 session is understood in the art. The designation also relates to the type of message in the particular signal. The t30-indicator(DoV.8/Dolowspeed) signal is shown at the t30-indicator(DoV.8) signal in Figure 1 and is shown as the t30-indicator(Dolowspeed) signal in

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Figure 3. The t30-indicator(CNG sent) signal is used to indicate to G1 if a CNG response has been transmitted by G2. The t30-indicator(DoV.8/Dolowspeed) signal is used to indicate whether a V.8 modem connection should continue or if a Group 3 modem connection should be established. *Network latency is here defined as the time between transmission of the t30-indicator(CNG) signal and reception of the t30-indicator(CNG sent) signal.* (Emphasis added).

It is difficult to understand how, given such a detailed description of network latency in regards to the T.30 session, and such a clear definition of network latency, the Examiner could assert that determining whether an upper threshold of frames have been received correctly is determining network latency. While the number of frames that have been received could be in some way related to network latency, Terry nowhere refers to T.30, much less the time between transmission of the t30-indicator(CNG) signal and reception of the t30-indicator(CNG sent) signal. Although the applicants have defined the term "network latency" in this manner, one of ordinary skill in the art would understand that network latency could also be defined as any equivalent of the time between transmission of the t30-indicator(CNG) signal and reception of the t30-indicator(CNG sent) signal, such as in accordance with other standards or other variables. However, a determination of whether an upper threshold of frames have been received correctly falls clearly outside of the definition of latency, and is not inherently disclosed by such. Withdrawal of this rejection is respectfully requested at least for this reason.

In addition, the Examiner states that Lauffenburger discloses a modem having a timer, referring to TX_CELL_TIME 310 of item 166, and asserts that the timer is operable to store a network latency value, referring to column 19, lines 53 to 64. However, it is clear that the discussion at column 19, lines 53 to 64 of Lauffenburger is addressed to PKT_TIME register 362, which stores a value indicating a maximum time allotted to fill a host buffer, as well as that communications manager 50 keeps track of the time that passes after a first ATM cell 272 is loaded to the current host buffer, and that the values stored in NUM_CELLS register 360 and PKT_TIME register 362 can be tuned to provide a balance between the latency caused in *buffering cells* prior to *receipt* by driver 32 and the processing burden placed on the operating system of host 12 in requesting additional buffers. Both PKT_TIME register 362 and NUM_CELLS register

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360 are contained within on-chip memory 168 of modem memory 60, whereas item 166 is part of an external memory 162 that stores a plurality of registers that are *firmware*, and that TX_CELL_TIME 310 tracks each transmission opportunity, and is incremented by one each time a data cell or idle cell is passed to line interface 70 for *transmission* to across communications link 18. Again, not only is the value stored in TX_CELL_TIME 310 not a latency value under any meaning of the word, it is certainly not a latency value as defined in the specification. Just as in Terry, Lauffenburger utterly fails to make mention of T.30, and while the Applicants do not consider the definition of latency to be limited to the variables defined in T.30, there is certainly no way a packet incrementing register that increments each time a data cell or idle cell is transmitted would be related in any manner to measuring latency as defined in the specification. Furthermore, it is also clear that TX_CELL_TIME 310 has nothing to do with either PKT_TIME register 362 and NUM_CELLS register 360, which are contained in different memory devices and are used for different functions, namely to provide a balance between the latency caused in *buffering cells* prior to *receipt* by driver 32 and the processing burden placed on the operating system of host 12 in requesting additional buffers. Again, the only latency associated with PKT_TIME register 362 and NUM_CELLS register 360 is unrelated to the latency defined in the specification. Withdrawal of this rejection is respectfully requested at least for this reason, also.

Finally, there is no motivation to combine Terry and Lauffenburger, in addition to the failure of the combination to disclose each element of the claimed invention. As previously discussed, Lauffenburger discloses that the "latency" caused in buffering cells prior to receipt by driver 32 as defined in that reference can be "balanced" by "tuning" NUM_CELLS register 360 and PKT_TIME register 362. Thus, there is no motivation to compare latency to a threshold in Lauffenburger, as it is only being "balanced" by "tuning" NUM_CELLS register 360 and PKT_TIME register 362. Likewise, the modem of Terry operates perfectly well without a timer, using the number of frames that have been received correctly to determine whether a clock rate can be increased – where would a timer fit in to Terry? The Examiner is impermissibly using the teachings of the pending application and hindsight to paste together Terry and Lauffenburger, but there is certainly

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no motivation to do so, not to mention that even if they were somehow combined, they would fail to disclose each element of the claimed invention.

It is further noted that claim 7 does not include "calling modem being operable to compare the network latency to a network latency threshold," but rather "a comparison block to compare the network latency value and a network latency threshold," that claim 11 includes "comparing the network latency value to a network latency threshold," and that claim 15 includes "comparing a network latency to a network latency threshold." Each of these limitations are different from that of claim 1, but the rejections of claims 7, 11 and 15 over Terry in view of Lauffenburger are inappropriate for the same reasons.

Claims 2, 3, 5, 9, 13 and 18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Terry in view of Lauffenburger and further in view of Schuster, and claims 4, 6, 8, 10, 12, 14, 19 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Terry in view of Lauffenburger and further in view of Yoshida et al. These claims are allowable at least for the reasons that they depend from an allowable base claim and add limitations not found in the prior art. Applicant reserves the right to traverse the rejections of these specific claims in the future, but does not do so now as the combination of Terry in view of Lauffenburger utterly fails to anticipate independent claims 1, 7, 11, and 15 under 35 U.S.C. 103(a).

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CONCLUSION

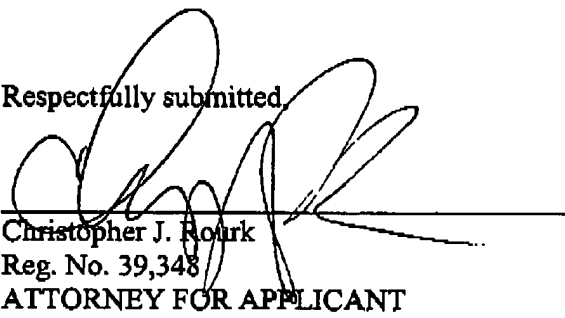
In view of the foregoing remarks and for various other reasons readily apparent, Applicant submits that all of the claims now present are allowable, and withdrawal of the rejection and a Notice of Allowance are courteously solicited.

If any impediment to the allowance of the claims remains after consideration of this amendment, a telephone interview with the Examiner is hereby requested by the undersigned at (214) 939-8657 so that such issues may be resolved as expeditiously as possible.

A response to the pending office action within the one-month extension period was due on October 17, which fell on a Sunday. As such, this response is timely filed within the one month extension of time period on Monday, October 18, 2004. An additional fee of \$110 for a one-month extension of time is believed to be due, for which a petition is hereby made, and the Commissioner is hereby authorized to charge this fee to the deposit account of Godwin Gruber LLP, No. 500530. If any applicable fee or refund has been overlooked, the Commissioner is hereby authorized to charge any fee or credit any refund to the deposit account of Godwin Gruber LLP, No. 500530.

Respectfully submitted,

Date: October 18, 2004


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